

	Integrated Management System	Doc Ref	APTS-FHRA-FM-101A
		Revision	01
General Terms and Conditions for the Sale of Services			

Athena PTS Limited
General Terms and Conditions for the SALE of Services

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

The following expressions and derivatives thereof appearing in capital letters in these **CONDITIONS** shall have the meaning hereby assigned to them unless otherwise specified.

"AFFILIATE" - any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company. For the purpose of this definition "holding company" and "subsidiary" have the meanings given to those terms in Section 1159 and Schedule 6 of the Companies Act 2006 and, only for the purposes of the membership requirement contained in Sections 1159(1) (b) and (c) thereof, a company shall be treated as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee.

"APPLICABLE LAWS" - all laws, rules, regulations, by-laws, decrees, orders and the like, whether of governmental or other authority or agency having jurisdiction over the **PARTIES**, the **SERVICES** and the **DELIVERABLES** and which are or become applicable.

"BUSINESS DAY" – Any day of the week, except Saturday, Sunday or Public Holiday.

"CHARGES" - the aggregate of all sums payable under the **CONTRACT** calculated in accordance with the prices set out in the **QUOTATION** as may be amended in the **ORDER**, in the currency specified in the **QUOTATION**.

"CLAIM" or **"CLAIMS"** - any claim, demand, cause of action, proceedings, judgement, or award (comprising reasonable sums paid by way of settlement or compromise and reasonable legal fees, costs and expenses), liability, loss, expense, damages, relief of penalty or fine, arising out of or in connection with the performance, or failure to perform in accordance with the **CONTRACT**.

"CLIENT GROUP" - where the **PURCHASER** is not the ultimate beneficiary or user of the **GOODS**, such beneficiary, its **AFFILIATES** and its and their respective directors, officers, employees (including any agency personnel), but shall not include any member of the **SUPPLIER GROUP**.

"COMMENCEMENT DATE" – The date on which provision of **SERVICES** begins, as stated in the **ORDER**.

"COMPLETION" - the point in time when commissioning of the **SERVICES** has been completed in accordance with clause 3.

"CONDITIONS" - these general terms and conditions.

"CONFIDENTIAL INFORMATION" - any and all information or data (whether oral, visual or recorded in writing or electronically or on any other medium) including information relating to **PURCHASER GROUP'S** or **SUPPLIER GROUP'S** operations, processes, plans, intentions, product information, **IP RIGHTS**, market opportunities, or business affairs disclosed to or acquired by the other **PARTY** in connection with the **CONTRACT**, whether or not the same was so disclosed or acquired before, on or after the date of the **CONTRACT**.

"CONSEQUENTIAL LOSS":-

(a) consequential or indirect loss under English law; and/or

(b) loss and/or deferral of production, loss of product, loss of use, loss of revenue, losses resulting from downtime or the costs of replacement power or compression, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (a) above and whether or not foreseeable at the date of the **CONTRACT**.

"CONTRACT" - the contract between the **PURCHASER** and the **SUPPLIER** for the supply of **SERVICES** and/or **DELIVERABLES** comprised of the **QUOTATION** the **ORDER**, these **CONDITIONS**, and any other documents, or extracts thereof, attached, referenced or specified in either of the **QUOTATION** or the **ORDER**.

"CONTRACT PRICE" - the aggregate of all sums payable under the **CONTRACT** calculated in accordance with the prices set out in the **QUOTATION** as may be amended in the **ORDER**, in the currency specified in the **QUOTATION**.

"DELIVERABLES" - the deliverables as detailed in the **QUOTATION** and confirmed or amended in the **ORDER** including any materials, equipment, plant, **SPARE PARTS**, reports, specifications, certification documentation, or drawings.

"DELIVERY" - the point in time when the delivery of any **DELIVERABLES** has been completed in accordance with clause 3.

"FORCE MAJEURE" - the occurrence of any act or event, which is unforeseeable and outside the control of the **PARTY** which invokes it, and which renders said **PARTY** unable to comply with all or part of its obligations under the **CONTRACT**. Provided the foregoing conditions are satisfied, **FORCE MAJEURE** includes Acts of God (including epidemic, tidal wave, lightning, earthquake, hurricane), hostilities or acts of war (whether declared or not), riots, civil or military disturbances, national or regional strikes (excluding strikes, lock-outs and other industrial disputes or actions by **SUPPLIER GROUP**) and acts of any government or public authority or any representative thereof whether or not legally valid and including imposing an export or import restriction.

"HSSE" - health, safety, security and environment.

"INSOLVENCY EVENT" - the event of a **PARTY** becoming bankrupt or making a composition or arrangement with its creditors or a winding-up order of such **PARTY** being made or (except for the purposes of solvent amalgamation or solvent reconstruction) a resolution for its voluntary winding-up being passed or a provisional Liquidator, Receiver, Administrator or Manager of its business or undertaking being appointed, or a petition being presented for an administration order to be made pursuant to Section 9 of the Insolvency Act 1986, or possession being taken by or on behalf of the holders of any debenture secured by a floating charge of any property comprised in or subject to the floating charge or any equivalent act or thing being done or suffered under any **APPLICABLE LAWS**.

"IP RIGHTS" - patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all

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applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“ITT” – **PURCHASER’S** formal written Invitation to Tender.

“LIQUIDATED DAMAGES” - as set out in clause 3.13.

“MOBILISATION POINT” – A **WORKSITE** not controlled by **SUPPLIER’S GROUP**.

“ORDER” - **PURCHASER’S** order for **SERVICES** and/or **DELIVERABLES** as set out in **PURCHASER’S** purchase order form.

“PARTY” - **PURCHASER** or **SUPPLIER** as the case may be.

“PARTIES” - **PURCHASER** and **SUPPLIER** together.

“PERSON” - any individual, company, firm, partnership, association or body corporate.

“PLANT” – means apparatus, machinery and vehicles intended to form or forming part of the permanent Works.

“PURCHASER” - the **PARTY** issuing the **ORDER** and designated as such in the **ORDER**.

“PURCHASER GROUP” - **PURCHASER**, its **AFFILIATES** and its and their respective directors, officers, employees, (including agency personnel), and **CLIENT GROUP** but shall not include any member of **SUPPLIER GROUP**.

“PURCHASER-PROVIDED ITEMS” - any items of equipment, materials or plant provided by the **PURCHASER** to the **SUPPLIER** pursuant to the **CONTRACT**.

“QUOTATION” - written quotation(s) provided by the **SUPPLIER** to the **PURCHASER** in respect of the **SERVICES** and any **DELIVERABLES**.

“SERVICES” - the services to be supplied by **SUPPLIER** to **PURCHASER** as detailed in the **ORDER**

“SPARE PART” - any individual components described as **GOODS**, or **DELIVERABLES** in the **QUOTATION** in quantities either specified by the **PURCHASER**, or in default thereof, recommended by the **SUPPLIER**, all as confirmed in the **ORDER**.

“SUB-CONTRACTOR” - any **PERSON** with whom the **SUPPLIER** has subcontracted directly or indirectly at any level in relation to the provision of the **SERVICES** and/or **DELIVERABLES**

“SUPPLIER” – Athena Professional, Technical Services Limited, incorporated in England and Wales with company number 07708468 and registered office at Kendal House, Murley Moss Business Village, Oxenholme Road, Kendal LA9 7RL.

“SUPPLIER GROUP” - **SUPPLIER**, its **SUB-CONTRACTORS**, its and their **AFFILIATES**, its and their respective directors, officers, employees (including agency personnel), but shall not include any member of **PURCHASER GROUP**.

“THIRD PARTY” - any **PERSON** that is not a member of **PURCHASER GROUP** or **SUPPLIER GROUP**.

“WORKSITE” - all the lands, waters and other places on, under, in or through which the **SERVICES** are carried out, including manufacturing, fabrication and storage facilities, design offices, offshore installations, floating construction equipment, vessels, offices and workshops.

1.2. INTERPRETATION

1.2.1 All headings in these **CONDITIONS** are used for convenience only and shall not affect the construction or validity of the **CONTRACT**.

1.2.2 Any reference herein to a clause shall, unless expressly stated otherwise, be construed as a reference to the relevant recital or clause of these **CONDITIONS**.

1.2.3 Reference to any statute, statutory provision or statutory instrument includes a reference to the statute, statutory provision or statutory instrument as amended, extended or re-enacted from time to time.

1.2.4 Reference to the singular includes a reference to the plural and vice versa. Reference to persons shall include companies and firms and vice versa. Reference to any gender includes a reference to the other genders.

1.2.5 “Including” shall be construed to mean “including but not limited to”.

2. BASIS OF CONTRACT

2.1. In response to **PURCHASER’S ITT**, the **SUPPLIER** shall provide a **QUOTATION** which shall be valid for a period of only thirty (30) calendar days from its date of issue.

2.2. The **ORDER** submitted by **PURCHASER** to purchase the **SERVICES** and/or **DELIVERABLES** from **SUPPLIER** in accordance with any **QUOTATION** to which it refers shall confirm **PURCHASER’S** requirements for such **SERVICES** and/or **DELIVERABLES**. Subject to the provisions of sub-Clause 2.3, the **PURCHASER** is responsible for ensuring that such requirements for the **SERVICES** and/or **DELIVERABLES** (including any applicable specification relating thereto) are set out clearly in the **ORDER** and are complete and accurate. The **SUPPLIER** shall acknowledge in writing receipt thereof within five **BUSINESS DAYS**.

2.3 In the absence of **SPARE PARTS** being specified by the **PURCHASER** in its **ITT**, the **SUPPLIER** may include in its **QUOTATION** its recommendation for both the items to be categorised as such amongst the other **DELIVERABLES**, the quantities to be held and any restrictions on shelf life.

2.4. These **CONDITIONS** shall apply to the **CONTRACT** to the exclusion of any other terms that **PURCHASER** seeks to impose or incorporate, including any terms attached to the **ORDER** or which are implied by trade, custom or course of dealing.

2.5. Any samples, drawings, descriptive matter or advertising produced by the **SUPPLIER** and any descriptions or illustrations contained in the **SUPPLIER’S** catalogues or brochures are, unless specified in the **QUOTATION**, produced for the sole purpose of giving an approximate idea of the **SERVICES** and/or **DELIVERABLES** described in them. They shall not form part of the **CONTRACT** or have any contractual force, unless such items are expressly agreed and incorporated into the **CONTRACT**.

3. SUPPLY OF SERVICES AND DELIVERABLES

3.1. The **SUPPLIER** shall supply the **SERVICES** and any **DELIVERABLES** to **PURCHASER** in accordance with the specification of the **SERVICES** and/or the **DELIVERABLES** set out in the **QUOTATION** in all material respects.

3.2. **SERVICES** and/or **DELIVERABLES** shall, subject to clause 3.12, be provided within the time period stated in the **QUOTATION** or **ORDER**, or if no time is specified, then within a reasonable time period.

3.3. All personnel employed on the **SERVICES** shall be competent, properly qualified and skilled in accordance with good industry practice for the work they are required to perform.

3.4. The **SUPPLIER** shall be responsible for any **SERVICES** performed by any **SUB-CONTRACTOR**, or by agency personnel as if such **SERVICES** were performed by an employee of the **SUPPLIER**.

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- 3.5. When the **SERVICES** are to be carried out at a **WORKSITE** that is not controlled by a member of the **SUPPLIER GROUP**:
- 3.5.1 The **SUPPLIER** shall commence the **SERVICES** at or from the mobilisation point on the commencement date, as shall be detailed in the **ORDER** and shall proceed with the **SERVICES** in accordance with the program agreed in the **CONTRACT**.
- 3.5.2 The **SUPPLIER** shall use reasonable endeavours to ensure such **WORKSITE** is free of waste materials, rubbish and debris generated by the **SUPPLIER GROUP**. On completion of the **SERVICES**, or part of them, the **SUPPLIER** shall (except as otherwise agreed with the **PURCHASER**) clear and remove all **SUPPLIER** equipment, waste material, rubbish and debris generated by the **SUPPLIER GROUP** from such **WORKSITE**, leaving it in a clean, tidy and safe condition.
- 3.5.3 The **SUPPLIER** shall (so far as reasonably practicable to do so without compromising **SUPPLIER's** compliance with **APPLICABLE LAWS**.) comply with **PURCHASER'S** instructions and directions on all matters relating to the **SERVICES**.
- 3.6. If any **PURCHASER-PROVIDED ITEMS** are provided to the **SUPPLIER** under the **CONTRACT**, the **SUPPLIER** shall:
- 3.6.1 treat such items with reasonable care;
- 3.6.2 insure such items whilst they are held in the **SUPPLIER'S** possession; and
- 3.6.3 inspect such items within five (5) **BUSINESS DAYS** of receipt and notify the **PURCHASER** should any amendment to the **QUOTATION** be required further to such inspection.
- 3.7. In relation to **DELIVERABLES** which are items of **PLANT** or **SPARE PARTS**, the provisions of clauses 3.9 to 3.15 shall apply in respect of **DELIVERY**. Clause 3.12 shall also apply in respect of the performance of **SERVICES**.
- 3.8. In relation to **ORDERS** for **DELIVERABLES** with **DELIVERY** within the United Kingdom, **SUPPLIER** shall deliver such **DELIVERABLES** to the location(s) identified in the **QUOTATION**, in the **ORDER**, or as otherwise agreed by the **PARTIES** in writing prior to **DELIVERY**.
- 3.9. If applicable, the **SUPPLIER** shall ensure that **DELIVERY** of any **DELIVERABLES** is accompanied by a delivery note which shows all relevant **PURCHASER** and **SUPPLIER** reference numbers, the type and quantity of the **DELIVERABLES** (including the code number of the **DELIVERABLES**, where when applicable), special storage instructions (if any) and, if the **ORDER** is being delivered in instalments, the outstanding balance of **DELIVERABLES** (if any) remaining to be delivered. Each **DELIVERY** shall also comply with all **APPLICABLE LAWS** relating to the labelling, packaging, storage, handling and delivery of the **DELIVERABLES**.
- 3.10. **DELIVERY** of the **DELIVERABLES** shall be completed when the **DELIVERABLES** are at the **WORKSITE**, or available for collection as may be agreed with the **PURCHASER**.
- 3.11. The **SUPPLIER** may deliver the **DELIVERABLES** by instalments, if applicable, which shall be invoiced and paid for separately. Any delay in **DELIVERY** or defect in an instalment shall not entitle **PURCHASER** to cancel any other instalment.
- 3.12. The time of performance of the **SERVICES** and **DELIVERY** are not of the essence. However, the **SUPPLIER** shall use reasonable endeavours to prevent or minimise any delay in commencing, completing and/or delivering any part of the **DELIVERABLES** and/or **SERVICES** for which there is an agreed date for such commencement, completion and/or **DELIVERY**. The **SUPPLIER** shall not be liable for any delay in respect of the performance of the **SERVICES** and/or **DELIVERY** that is caused by, and shall be entitled to an extension of any agreed date or time for performance of the **SERVICES** and/or **DELIVERY** in the event of, **FORCE MAJEURE** or **PURCHASER'S** failure to provide **SUPPLIER** with adequate delivery instructions or fundamental instructions, access to the **WORKSITE** relevant to the supply of the **SERVICES** and/or **DELIVERABLES**.
- 3.13. If the **SUPPLIER** fails to complete the **SERVICES** and/or fails to **DELIVER** the **DELIVERABLES** thereby jeopardising completion in accordance with any date agreed for **Completion** and an extension of time for same has not been agreed with the **PURCHASER**, then, as the **PURCHASER'S** sole financial remedy in respect of late completion, and/or delivery, the **SUPPLIER** shall pay the **PURCHASER** liquidated and ascertained damages for delay, calculated at the rate of half of one per cent (0.5%) of the **Contract Price** for each full week or part thereof that shall elapse from the delivery date up to and including the date of actual delivery (the "**LIQUIDATED DAMAGES**"). The **PARTIES** agree that any such **LIQUIDATED DAMAGES** are a genuine pre-estimate of the loss and damage likely to be suffered by the **PURCHASER** as a result of delay by the **SUPPLIER** in complying with clauses 3.1 to 3.12 and are not a penalty. The **SUPPLIER'S** financial liability for **LIQUIDATED DAMAGES** under this clause shall be limited to two per cent (2%) of the **CONTRACT PRICE**. When **DELIVERABLES** consist entirely of **SPARE PARTS**, the **SUPPLIER** shall have no financial liability for delay in **DELIVERY**, except for any identified as "Critical" at any reasonable time prior to the earliest scheduled **DELIVERY**. The **PURCHASER** may terminate the **CONTRACT** for late delivery in respect of **DELIVERABLES** other than **SPARE PARTS** after the cap on the **SUPPLIER'S** liability, set out in this clause 3.13, has been reached.
- 3.15. Subject to clause 3.16, if the **PURCHASER** fails to allow **DELIVERY** of the **DELIVERABLES** on the date and at the location prescribed in the **QUOTATION** (as may be modified by the **ORDER**), then, except when such failure or delay is caused by an event of **FORCE MAJEURE**, or the **SUPPLIER'S** failure to comply with its obligations under the **CONTRACT**, then:
- 3.15.1 **DELIVERY** of the **DELIVERABLES** shall be deemed to have been completed at 09:00 on the first **BUSINESS DAY** after the day on which the **SUPPLIER** made the **DELIVERABLES** available in accordance with the **QUOTATION** or **ORDER**; and
- 3.15.2 **SUPPLIER** shall store the **DELIVERABLES** until **DELIVERY** takes place, and charge **PURCHASER** for all related costs and expenses (including insurance).
- 3.16. When **SPARE PARTS** are carried offshore by representatives of the **SUPPLIER**, the **PURCHASER** shall accept **DELIVERY** of such **SPARE PARTS** upon their arrival at the embarkation point for transfer to **PURCHASER'S** facilities offshore.

4. INSPECTION AND ACCEPTANCE

- 4.1. The **PURCHASER** shall be entitled to inspect, test and review the **DELIVERABLES** at all reasonable times, provided that the **PURCHASER** gives the **SUPPLIER** no less than forty-eight (48) hours' notice and subject to compliance by the **PURCHASER** with the **SUPPLIER'S** HSSE procedures if such inspection takes place at the **SUPPLIER'S** or its **SUB-CONTRACTOR'S WORKSITE**. Within two (2) **BUSINESS DAYS** of such inspection, the **PURCHASER** shall inform the **SUPPLIER** if it discovers that the **DELIVERABLES** (or any part thereof) do not comply or are unlikely to comply with the

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specified requirements of the **CONTRACT** and the **SUPPLIER** shall use reasonable endeavours to take remedial action as soon as reasonably practicable to ensure such compliance. The **PURCHASER** shall have the right to conduct further inspections, tests or reviews after the **SUPPLIER** has carried out its remedial actions.

4.2. The **PURCHASER** shall inspect the **DELIVERABLES** within three (3) calendar days of **DELIVERY** and notify **SUPPLIER** if it intends to reject any **DELIVERABLES** which are **DELIVERED**, but which fail to meet the specified requirements of the **CONTRACT**.

4.3. If the **PURCHASER** does not notify the **SUPPLIER** of its intention to reject the **DELIVERABLES** in accordance with clause 4.2 then, after the expiry of five (5) **BUSINESS DAYS** from **DELIVERY**, the **DELIVERABLES** will be deemed to have been accepted by the **PURCHASER**.

5. WARRANTY AND DEFECTS CORRECTION

5.1. The **SUPPLIER** warrants that:

5.1.1. the **SERVICES** and any **DELIVERABLES** will be provided using the reasonable skill and care to be expected of a reputable **SUPPLIER** experienced in providing services the same as, or similar to, the **SERVICES**.

5.1.2. on **DELIVERY** and for a period of twelve (12) calendar months from the commissioning date of the **DELIVERABLES** shall:

5.1.2.1 conform with any relevant description or specification set out in the **QUOTATION** or **ORDER**, including **APPLICABLE LAWS**;

and

5.1.2.2 be free from significant defects in either materials or workmanship.

5.2. The relevant warranty period in respect of:

5.2.1. the **SERVICES** shall be six (6) months from the date of performance of the **SERVICES**; and

5.2.2. the **DELIVERABLES** shall be as set out in clause 5.1.2.

5.3. Subject to clause 5.4, if:

5.3.1 the **PURCHASER** gives notice in writing to the **SUPPLIER** during the **WARRANTY PERIOD** and within a reasonable time of discovery that some or all of the **SERVICES** and/or **DELIVERABLES** do not comply with the applicable warranties set out at clause 5.1;

5.3.2 the **SUPPLIER** is given a reasonable opportunity to examine **DELIVERABLES** (when the alleged breach of warranty relates to **DELIVERABLES**); and

5.3.3 the **PURCHASER** (if requested to do so by the **SUPPLIER** and when the alleged breach of warranty relates to **DELIVERABLES**) returns the **DELIVERABLES** to the **SUPPLIER'S** place of business at the **SUPPLIER'S** cost, then **SUPPLIER** shall:

5.3.3.1 re-perform the defective **SERVICES**; and/or

5.3.3.2 as agreed with the **PURCHASER**, repair or replace the defective **DELIVERABLES**, or, (if already paid for), refund the price of the defective **DELIVERABLES**, or part thereof, in full.

5.4. The **SUPPLIER** shall not be liable for the failure of the **SERVICES** or **DELIVERABLES** to comply with the warranties set out in clause 5.1 in any of the following circumstances:

5.4.1 The defect arises or is exacerbated because the **PURCHASER** failed to follow the **SUPPLIER'S** written instructions as to the storage, commissioning, installation, use and maintenance of the **DELIVERABLES**;

5.4.2 The defect arises as a result of the **SUPPLIER** following any drawing, design or specification supplied by the **PURCHASER** in respect of the **SERVICES** and/or **DELIVERABLES**;

5.4.3 the **PURCHASER** alters or modifies such **DELIVERABLES** without the prior written consent of **SUPPLIER**;

5.4.4 The defect constitutes fair wear and tear;

5.4.5 The defect is the result of wilful or negligent damage caused by a person other than a member of the **SUPPLIER GROUP**; or

5.4.6 The defect is the result of abnormal storage or working conditions.

5.5. The warranties provided by the **SUPPLIER** in respect of the **SERVICES** and/or **DELIVERABLES** are limited to those set out in Clause 5.1. Except as provided in this clause 5, the **SUPPLIER** shall have no liability to the **PURCHASER** in respect of the **SERVICES** and/or **DELIVERABLES**' failure to comply with the warranties set out in clause 5.1.

5.6. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the **CONTRACT**.

5.7. The warranties in:

5.7.1. Clause 5.1.1 shall apply to any re-performed **SERVICES** in accordance with this clause 5 for six (6) months from the date of re-performance or twelve (12) months from the date of performance of the original **SERVICES**, whichever is the earlier; and

5.7.2. Clause 5.1.2 shall apply to any repaired or replacement **DELIVERABLES** supplied by the **SUPPLIER** in accordance with this clause 5 for twelve (12) calendar months from such repair or replacement or twenty-four (24) calendar months from the date of **DELIVERY** of the original **DELIVERABLES**, whichever is the earlier.

6. PERMITS, LICENCES AND COMPLIANCE WITH APPLICABLE LAWS

6.1. The **SUPPLIER** shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the **CONTRACT**.

6.2. Without prejudice to the provisions of clause 11 of these **CONDITIONS**, the **SUPPLIER** shall observe, be bound by and comply with all **APPLICABLE LAWS**.

7. TITLE AND RISK

7.1. The risk in the **DELIVERABLES** shall pass to the **PURCHASER** on **DELIVERY**.

7.2. Title to the **DELIVERABLES**, other than **PURCHASER PROVIDED ITEMS**, shall not pass to **PURCHASER** until the **SUPPLIER** receives full payment in cleared funds for them.

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- 7.3. Until title to the **DELIVERABLES** has passed to the **PURCHASER**, the **PURCHASER** shall:
- 7.3.1 Prior to installation, store the **DELIVERABLES** separately from all other goods held by the **PURCHASER** so that they remain identifiable as the **SUPPLIER'S** property;
 - 7.3.2 Not remove, deface or obscure any identifying mark on or relating to the **DELIVERABLES**;
 - 7.3.3 Maintain the **DELIVERABLES** in satisfactory condition and keep them insured against all risks for their full price from the date of **DELIVERY**;
 - 7.3.4 Notify the **SUPPLIER** immediately if it becomes subject to an **INSOLVENCY EVENT**; and
 - 7.3.6 Give the **SUPPLIER** such information relating to the **DELIVERABLES** as the **SUPPLIER** may require from time to time.
- 7.4. If before title to the **DELIVERABLES** passes to the **PURCHASER**, the **PURCHASER** becomes subject to an **INSOLVENCY EVENT**, then, without limiting any other right or remedy the **SUPPLIER** may have, the **SUPPLIER** may at any time:
- 7.4.1 require the **PURCHASER** to deliver up all **DELIVERABLES** in its possession which have not been resold or irrevocably incorporated into another product; and
 - 7.4.2 if the **PURCHASER** fails to do so promptly, enter any premises of the **PURCHASER** or of any **THIRD PARTY** where the **DELIVERABLES** are stored in order to recover them at the **PURCHASER'S** cost.

8. CHARGES

- 8.1. In consideration for the provision of the **SERVICES** and any **DELIVERABLES**, the **PURCHASER** shall pay the **SUPPLIER** the **CHARGES**, which shall be charged on a time and materials basis unless agreed otherwise between the **PARTIES** in writing.
- 8.2. The **CHARGES** shall be as set out in the **QUOTATION**
- 8.3. Unless otherwise stated in the **CONTRACT**, the **CHARGES** are:
- 8.3.1 exclusive of UK value added tax ("**VAT**"). at the rate current at the Point of Sale. When a taxable supply for **VAT** purposes is made under the **CONTRACT** by the **SUPPLIER**, the **PURCHASER** shall, in respect of a valid **VAT** invoice from the **SUPPLIER**, pay such amounts in respect of **VAT** as are chargeable on the supply of the **SERVICES** and/or the **DELIVERABLES** together with payment for such **SERVICES** and/or **DELIVERABLES**; and
 - 8.3.2 exclusive of all charges for the packaging, packing, shipping, carriage, insurance and delivery of any **DELIVERABLES** and any duties, taxes, imposts or levies, other than **VAT** and the **PURCHASER** shall pay to the **SUPPLIER** such additional amounts as set out in this clause 8.3 and identified in the **SUPPLIER'S** invoice.
- 8.4. The **SUPPLIER** may, by giving notice to the **PURCHASER** prior to the scheduled delivery date, increase the price of the **SERVICES** and/or **DELIVERABLES** for any increase in cost that is due to:
- 8.4.1 Any factor beyond the **SUPPLIER'S** control (including foreign exchange fluctuations, increases in taxes and duties, London Metal Exchange fluctuations) that could not have been known, or reasonably anticipated by the **SUPPLIER** of the stature required under sub-Clause 5.1.1. The **PURCHASER** shall have the right to terminate the **ORDER** by giving notice to **SUPPLIER** within 14 (fourteen) calendar days of being notified of the price increase;
 - 8.4.2 Any request by the **PURCHASER** to change the date or dates for the performance of the **SERVICES** and/or **DELIVERY** date(s), quantities or types of the **DELIVERABLES** requested under the **CONTRACT**, or the specification for such **SERVICES** and/or **DELIVERABLES** as set out in the **QUOTATION**; or
 - 8.4.3 Any delay instructed by the **PURCHASER** or caused by the **PURCHASER'S** failure to give the **SUPPLIER** adequate information or instructions timeously.

9. INVOICING AND PAYMENT

- 9.1. The **SUPPLIER** shall invoice the **PURCHASER** at the address specified in the **ORDER** for all sums due under the **CONTRACT**, referencing the **ORDER** number. Invoices shall be submitted electronically in accordance with the milestones set out in the **QUOTATION** (if any) or the **ORDER**, or, if no milestones are specified, upon completion of the **SERVICES** or **DELIVERY** of **DELIVERABLES**, as applicable.
- 9.2. If the **PURCHASER** disputes any invoice, the **PURCHASER** shall within ten (10) calendar days notify the **SUPPLIER** of the amount(s) under dispute and the **SUPPLIER** shall submit a corresponding credit note, bearing the reference and details of the original invoice, within five (5) **BUSINESS DAYS** of receipt of such notification. The **PURCHASER** shall pay the undisputed part of the invoice in accordance with clause 9.3. If on resolution of any dispute further sums are due to the **SUPPLIER**, the **SUPPLIER** shall invoice such sums and these shall be payable in accordance with clause 9.3 together with interest on the further amount at the rate of three per cent (3%) per annum above the Bank of England base rate from the date of the original invoice.
- 9.3. The **PURCHASER** shall pay the **SUPPLIER'S** invoice in full and cleared funds within thirty (30) calendar days of the date of the invoice, and in such currency specified in the **QUOTATION**, to such bank account as the **SUPPLIER** shall designate on such invoices.
- 9.4. If, other than in the event of a dispute under sub-Clause 9.2, the **PURCHASER** fails to make any payment due to the **SUPPLIER** under the **CONTRACT** by the due date for payment, then without prejudice to the **SUPPLIER'S** other rights and remedies:
- 9.4.1. The **PURCHASER** shall pay interest on the overdue amount at the rate of four per cent (4%) per annum above the Bank of England base rate from the original due date of the invoice. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The **PURCHASER** shall pay the interest together with the overdue amount; and
 - 9.4.2. the **SUPPLIER** reserves the right to suspend **DELIVERY** of any **SERVICES** and/or **DELIVERABLES** which are unperformed or undelivered (as applicable) at the due date for such payment unless and until such payment is received.
- 9.5. Subject to clause 9.2, any and all amounts due under the **CONTRACT** shall be paid without any set-off, counter-claim, deduction or withholding (except for any deduction or withholding required by law).

10. TAXES

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Subject to clause 8.3, the **SUPPLIER** shall pay all taxes, duties, levies, charges and contributions (including national insurance and social security benefits) assessed against it in connection with the **SERVICES** and/or **DELIVERABLES**.

11. LIABILITIES

11.1. Except to the extent of any **LIQUIDATED DAMAGES**, the **SUPPLIER** shall not have any liability to the **PURCHASER GROUP** for any **CONSEQUENTIAL LOSS** and accordingly the **PURCHASER** shall save, indemnify, defend and hold harmless the **SUPPLIER GROUP** from the **PURCHASER GROUP'S CONSEQUENTIAL LOSS** in excess thereof whether arising from, relating to, or in connection with the **SUPPLIER'S** performance or non-performance of the **CONTRACT** that led to the **SUPPLIER GROUP'S** exposure thereto.

11.2. If either **PARTY** becomes aware of any incident likely to give rise to a **CLAIM** under any indemnity under these **CONDITIONS**, it shall notify the other and the **PARTIES** shall co-operate fully in investigating the incident, allow the indemnifying party to have conduct of the **Claim** and provide all reasonable assistance in relation to the defence of such **CLAIM**. Neither **PARTY** shall make any admission of liability, agreement or compromise in relation to a **CLAIM**, or any suspected **CLAIM**, without the prior written consent of the other **PARTY**.

11.3. Nothing in these **CONDITIONS** shall limit or exclude the **SUPPLIER'S** liability for death, personal injury, fraud or fraudulent misrepresentation, under the **IP** indemnity at clause 13.4, or for any other matter in respect of which it would be unlawful for the **SUPPLIER** to exclude or restrict liability.

11.4. Subject to clause 11.3, the **SUPPLIER'S** total liability to the **PURCHASER** in respect of all losses arising under or in connection with the **CONTRACT**, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed one hundred per cent (100%) of the **CHARGES**.

11.5. The provisions of this clause 11 shall survive termination or expiry of the **CONTRACT**.

12. PURCHASER-SUPPLIED ITEMS, DOCUMENTS AND SPECIFICATIONS

12.1. The **SUPPLIER** shall be entitled to rely on any information supplied by the **PURCHASER**. However, should the **SUPPLIER** discover any discrepancies, ambiguities or inaccuracies in such information and particulars, it shall inform the **PURCHASER** in writing without undue delay from the time the **SUPPLIER** became aware, or could reasonably have been expected to be aware of such discrepancies, ambiguities or inaccuracies.

12.2. Any **PURCHASER** supplied materials, equipment, tools, drawings, specifications, data and documents ("**PURCHASER MATERIALS**") and all rights in the **PURCHASER MATERIALS** shall remain the exclusive property of the **PURCHASER**. The **SUPPLIER** shall keep the **PURCHASER MATERIALS** in safe custody, maintain them in good condition, not dispose or use the same other than in accordance with the **PURCHASER'S** written instructions or approval and shall return them to the **PURCHASER** as soon as they are no longer necessary for the performance of the **CONTRACT**.

13. INTELLECTUAL PROPERTY RIGHTS

13.1. All **IP RIGHTS** of the **PURCHASER** shall remain the exclusive ownership of the **PURCHASER** and may be used by the **SUPPLIER** only for the purpose of fulfilling its obligations under the **CONTRACT**.

13.2. All **IP RIGHTS** of the **SUPPLIER** or its **SUBCONTRACTORS** shall remain the exclusive property of the **SUPPLIER** or its **SUBCONTRACTORS**, as applicable. The **SUPPLIER** hereby grants a royalty-free, non-exclusive licence to the **PURCHASER** (and to any end user to which the **PURCHASER** supplies the **SERVICES** and/or any **DELIVERABLES**) to use the drawings supplied to it by the **SUPPLIER** and the manuals provided by the **SUPPLIER** only as may be necessary to install, use, maintain or repair the **DELIVERABLES** for the duration of the **CONTRACT**. If necessary, the **SUPPLIER** shall use reasonable endeavours to procure the grant by any **SUBCONTRACTORS** of a similar to that granted in this clause 13.2 licence in respect of any **SUB-CONTRACTOR IP RIGHTS**. Neither the licence granted pursuant to this clause 13.2 nor any other provision of the **CONTRACT** shall create any right or interest for the **PURCHASER** in respect of the detailed design, design drawings to which this **CONTRACT** relates. The licence granted pursuant to this clause 13.2 may not be transferred without the prior written consent of the **SUPPLIER** (such consent not to be unreasonably withheld or delayed).

13.3. The **SUPPLIER** warrants that the performance of the **SERVICES** and the provision of any **DELIVERABLES** (and any component part thereof) shall not infringe any **IP RIGHTS** of any **THIRD PARTY**.

13.4. The **SUPPLIER** shall save, indemnify, defend and hold harmless the **PURCHASER GROUP** from all **CLAIMS** arising out of any alleged infringement of any **IP RIGHTS** of any **THIRD PARTY** arising out of or in connection with the **SUPPLIER'S** performance of its obligations under the **CONTRACT**, except when any such alleged or actual infringement necessarily arises from the **ORDER** and/or **PURCHASER'S** instructions. However, the **SUPPLIER** shall inform the **PURCHASER** without undue delay should it become aware of any such actual, or potential infringement as a result of the **PURCHASER'S** instructions.

13.5. In the event of any such infringement, the **SUPPLIER** may, at its sole option:

- 13.5.1 procure the right to perform the **SERVICES** and/or use the **DELIVERABLES** without either impairing in any way the performance of the **SERVICES** or the suitability of the **DELIVERABLES**; or
- 13.5.2 modify, re-perform or replace the **SERVICES** or **DELIVERABLES**, as applicable, so that they are rendered non-infringing.

13.6. To the extent that the **DELIVERABLES** are to be refurbished, repaired or manufactured in accordance with a specification provided by the **PURCHASER**, the **PURCHASER** shall save, indemnify, defend and hold harmless the **SUPPLIER GROUP** from all **CLAIMS** arising out of any alleged infringement of any **IP RIGHTS** of any **THIRD PARTY** arising out of or in connection with the **SUPPLIER'S** use of the specification provided by **PURCHASER**.

13.7. The provisions of this clause 13 shall survive termination or expiry of the **CONTRACT**.

14. CONFIDENTIALITY

14.1. Subject to clause 14.2, each **PARTY** undertakes that it shall keep confidential, shall not disclose and shall use only for the purpose of the **CONTRACT** any **CONFIDENTIAL INFORMATION** provided by the other **PARTY**.

14.2. The obligations of confidentiality under this clause 14 shall not apply to any **CONFIDENTIAL INFORMATION** which the receiving **PARTY** can prove it either:

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- 14.2.1 was already known to it prior to its receipt from the disclosing **PARTY**;
- 14.2.2 was subsequently disclosed to it lawfully by a **THIRD PARTY** who did not obtain the same (whether directly or indirectly) from the receiving **PARTY**;
- 14.2.3 was in the public domain at the time of receipt by the receiving **PARTY** or has subsequently entered the public domain other than by reason of the breach of the provisions of this clause 14 or of any of the obligations of confidence owed to the disclosing **PARTY** (or its **SUB-CONTRACTORS** as the case may be) by the receiving **PARTY** or by any of the persons listed in clause 14.3; whether arising from, relating to or in connection with the performance or non-performance of the **CONTRACT**.
- 14.2.4 is independently developed by the receiving **PARTY** without using or referring to **CONFIDENTIAL INFORMATION**; or
- 14.2.5 is required to be disclosed by a court of law, regulatory authority or tribunal of competent jurisdiction.

14.3. Notwithstanding the provisions of clause 14.1, either **PARTY** may disclose **CONFIDENTIAL INFORMATION** provided by the other **PARTY** to any **SUBCONTRACTORS** and its professional advisers who need such **CONFIDENTIAL INFORMATION** for the purpose of enabling the **SUPPLIER** to perform any of its obligations or to exercise its rights under the **CONTRACT**, provided that such **PARTY** shall procure that the recipient keeps such **CONFIDENTIAL INFORMATION** confidential and does not disclose it for any other purpose.

14.4. The provisions of this clause 14 shall survive termination or expiry of the **CONTRACT**.

15. AUDIT

The **PURCHASER** and its authorised representatives shall have the right to audit the **SUPPLIER'S** compliance with its obligations under the **CONTRACT**, during normal business hours and on providing the **SUPPLIER** with no less than ten (10) **BUSINESS DAYS'** notice in writing of the same. The **SUPPLIER** shall use reasonable endeavours to co-operate with the **PURCHASER** and its authorised representatives in any such audit.

16. TERMINATION

- 16.1. Without limiting its other rights or remedies, either **PARTY** may terminate the **CONTRACT** with immediate effect by written notice to the other **PARTY** if:
- 16.1.1 The other **PARTY** commits a material breach of any term of the **CONTRACT** and (if such a breach is remediable) fails to promptly commence and thereafter diligently proceed to remedy such breach; or
 - 16.1.2 The other **PARTY** suffers an **INSOLVENCY EVENT**.
- 16.2. Without limiting its other rights or remedies, the **SUPPLIER** may terminate the **CONTRACT** with immediate effect by written notice to the **PURCHASER**, if any amount due under this **CONTRACT** remains unpaid sixty (60) calendar days after the due date for payment despite notice having been given to the **PURCHASER** requiring payment.
- 16.3. On **SUPPLIER'S** termination of the **CONTRACT** as a result of the **PURCHASER'S** default, the **PURCHASER** shall immediately pay to the **SUPPLIER** all of the **SUPPLIER'S** outstanding unpaid invoices and interest, and shall pay all costs and expenses reasonably incurred by the **SUPPLIER** in preparation for the performance of its obligations under the **CONTRACT** and arising out of such termination.
- 16.4. Without limiting the **PARTIES'** other rights or remedies, the **PURCHASER** may terminate the **CONTRACT** for convenience by written notice to the **SUPPLIER**. If the **PURCHASER** terminates the **CONTRACT** early pursuant to this clause 16.4, the **PURCHASER** shall forthwith pay any unpaid invoices of the **SUPPLIER**, together with a termination fee in the amount of any anticipated profit the **SUPPLIER** would otherwise be entitled to if the **CONTRACT** continued in effect and all costs and expenses, reasonably and properly incurred by the **SUPPLIER** in the performance of the **CONTRACT** prior to receipt of such notice, in relation to such early termination of the **CONTRACT**.
- 16.5. Termination of the **CONTRACT**, however arising, shall not affect any of the **PARTIES'** rights, remedies, obligations and liabilities that have accrued as at termination.
- 16.6. Clauses which expressly or by implication survive termination of the **CONTRACT** shall continue in full force and effect.

17. FORCE MAJEURE 17.1. Neither the **PURCHASER** nor the **SUPPLIER** shall be responsible for any failure to fulfil any term or condition of the **CONTRACT** if and to the extent that fulfilment has been delayed or temporarily prevented by an event of **FORCE MAJEURE** which has been notified in accordance with this clause 17.

17.2. In the event of a **FORCE MAJEURE** occurrence, the **PARTY** that is or may be delayed in performing its obligations under the **CONTRACT** shall notify the other **PARTY** without delay, giving the full particulars thereof and shall use reasonable endeavours to remedy the situation without undue delay.

18. SUBCONTRACTORS

The **SUPPLIER** shall be responsible for all work, acts, omissions and defaults of any **SUBCONTRACTOR** as fully as if they were work, acts, omissions or defaults of the **SUPPLIER**.

19. INDEPENDENCE OF SUPPLIER

The **SUPPLIER** warrants and represents that it is acting as an independent **SUPPLIER** and neither the **SUPPLIER** nor any of its **SUB-CONTRACTORS**, employees or personnel shall be the employees, agents or servants of the **PURCHASER**.

20. GENERAL LEGAL PROVISIONS

20.1. The **CONTRACT** constitutes the entire agreement between the **PARTIES** with respect to the provision of the **SERVICES** and any **DELIVERABLES** and supersedes all prior oral and written understandings, agreements, qualifications and representations made between the **PARTIES** prior to the **CONTRACT**. Each **PARTY** acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the other **PARTY** which is not set out in the **CONTRACT**.

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20.2. If any provision of these **CONDITIONS** shall be judged invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other provision of these **CONDITIONS** except only so far as shall be necessary to give effect to the construction of such invalidity, and in such a case any such invalid provision shall be deemed severed from these **CONDITIONS** without affecting in any way the validity of the balance of these **CONDITIONS**.

20.3. A waiver of any right under the **CONTRACT** is effective only if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a **PARTY** in exercising any right or remedy under the **CONTRACT** or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise.

21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

21.1. The **PARTIES** agree that The Contracts (Rights of Third Parties) Act 1999 (the "**ACT**") shall apply to the **CONTRACT** only in respect of any relief from liability, hold harmless, indemnity or benefit created in favour of

21.1.1 those members of the **PURCHASER GROUP** (other than the **PURCHASER**) pursuant to clause 13.4 and 14; and

21.1.2 to those members of the **SUPPLIER GROUP** (other than the **SUPPLIER**) pursuant to clauses 11.1, 13.6 and 14.

21.2. Subject to clause 21.1 above, the **PARTIES** intend that no provision of the **CONTRACT** shall confer any benefit, nor be enforceable by any **PERSON** who is not a **PARTY** by virtue of the **ACT**.

21.3. Notwithstanding the foregoing, the **CONTRACT** may be rescinded, amended or varied by the **PARTIES** without notice to or the consent of any of said members even if, as a result, any of said members' right to enforce a term of the **CONTRACT** may be varied or extinguished.

21.4. In enforcing any right to which it is entitled by virtue of the **ACT** and the provisions of the **CONTRACT**, the remedies of any of those members referred to in clause 21.1 above shall be limited to damages.

21.5. Any of those members referred to in clause 21.1 above shall not be entitled to assign any benefit or right conferred on it under the **CONTRACT** by virtue of the **ACT**.

22. ASSIGNMENT

The **SUPPLIER** may, at any time, assign any of its rights or obligations under the **CONTRACT** to any of its **AFFILIATES**.

23. CHANGES OR VARIATIONS TO THE CONTRACT

23.1. Subject to clause 23.3, any variation, including any additional terms and conditions, to the **CONTRACT** shall be effective only when agreed in writing and signed by the authorised signatories of both **PARTIES**.

23.2. Any adjustment to the **CONTRACT PRICE** and/or **DELIVERY** date resulting from any such variation shall be valued at the appropriate rates and prices included in the **CONTRACT** or, in the absence of any appropriate rates and prices, a fair valuation shall be made.

23.3. The **SUPPLIER** shall have the right, without agreeing the same in writing with the **PURCHASER**, to make any changes to the **GOODS** which are necessary to comply with any **APPLICABLE LAWS** or which do not adversely affect the nature, quality or performance of the **GOODS**. However, the **SUPPLIER** shall notify the **PURCHASER** of the same in writing immediately upon becoming aware of the necessity to make changes in any such event should the performance of the **GOODS** be compromised in any way.

24. GOVERNING LAW

The **CONTRACT**, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and the **PARTIES** irrevocably submit to the exclusive jurisdiction of the English courts.